

Public Records and Emergency Planning

February 26, 2016

IOWA

Department of Education



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Iowa Department of Education Webinar

Emergency Operations Management “Legal Issues in Emergency Planning”

Presenters: Jane Colacecchi, Emergency Preparedness
Consulting

Mary Gannon, PERB Board Member

Host: Gary Schwartz, Iowa Department of Education

Webinar Reminders

- Attendees are view-only participants.
- You will see the active speaker view of the meeting and the screen share of the meeting when the screen is being shared.
- Asking Questions: Q&A is provided via a text chat panel.
- In the Q&A, questions can be sent through the text chat panel anonymously or publicly.
- In the Q&A, attendee can specify that the answer be “Answer Live” or “Answer by Text.”
- Webinar Chat: Attendees can input text and send a message to all panelists when host enables. Host can disable viewer chat.

Agenda

- Public Records
- Law Enforcement Exception
- Student Records
 - Personally Identifiable Information
 - Directory Information
 - Exceptions to allow disclosure
- Employee Records
- Emergency Planning Records

What is a public record?

- Public records are:
- *any records, documents, tape, or other information, stored or preserved in any medium, **of or belonging to** this state or any . . . [political subdivision (city, county, school district, etc.)]*

Iowa Code § 22.1(3)(a)

Public Records can include:

- Emails if using a public address in to/from
- Documents on a computer, hard drive, flash drive, file cabinet, etc. as long as the “holder” is the governmental body
- Work conducted on a publicly owned computer such as Internet history, word documents, etc.

Did you really delete that email? Document?

- Just because you can no longer access an email or document doesn't mean a forensic technologist can't
- Can't delete any document, email, etc. if know or should know it could be used in a legal matter

Who has the records?

All governmental bodies, officials and employees are covered by Chapter 22, examination of public records. Each body must designate a “lawful custodian” for its records and must publicly announce who holds that responsibility.

Iowa Code § 22.1(2)

Who can access public records?

Anyone can examine, photograph or copy a public record without charge while the public record is in the physical possession of the custodian during the custodian's regular office hours.

Iowa Code § 22.2

Viewing and Copying

Bodies must establish reasonable rates for the examination of these records. Fulfillment of a request may be made contingent upon payment of a fee and the estimated expenses shall be communicated to the requestor.

You can't question why someone wants to see a particular record. You can, however, ask questions to help narrow down the universe of information.

Iowa Code § 22.3

So, if everything is public . . .

- Remember, just because a record is a public record does not mean there is not an exception to the law to protect that record's release.
- There are currently 67 exceptions to Iowa's public records law in the public records law. There are numerous exceptions throughout other state laws and in federal law as well.

Law Enforcement Exception

Peace officers' investigative reports, except for date, time, specific location, and immediate facts and circumstances surrounding a crime or incident are defined as confidential records.

Iowa Code § 22.7(5)

Student Records Exception

- Personal information in records regarding a student, prospective student, or former student
- The federal Family Educational Rights and Privacy Act (FERPA) is the primary, guiding and controlling law for student records
- Personally identifiable information cannot be released without either consent by the parent or a court order unless it has been classified as directory information

34 C.F.R. pt. 99
Iowa Code 22.7(1)

Exception to allow release of student records

- Pursuant to FERPA, school districts must annually notify parents of their rights under FERPA whether to have “directory” information released about their student.
- Directory information generally includes name, grade, athletic information, honors and awards, picture, etc.
- The school district needs this parental consent, usually a passive consent, to allow it to publish programs, yearbooks, etc.

Health and Safety Emergency

Schools can release personally identifiable information, beyond that defined as directory information, when necessary to protect the health or safety of the student or others. The school must

- Have an articulable and significant threat to the health or safety of a student or other individuals
- Related to an actual, impending or imminent emergency such as a natural disaster, terrorist, shooting or an epidemic

There is yet another exception to FERPA

FERPA allows schools to release confidential student information to

- Meet the goal of reducing juvenile crime
- State and local juvenile justice agencies – must be public bodies, not non-profits
- Allow the juvenile justice system to effectively serve, **prior to adjudication**, the student whose records are being released

34 C.F.R. pt. 99.38

Iowa Code § 280.25

However, the information

- Is not admissible in any court proceedings which takes place prior to a disposition hearing
- Cannot be used as the basis for a school disciplinary action against a student
- Must be used to determine the appropriate services needed to design a program to correct behaviors that lead to truancy, suspension, and expulsions
- Must be used to support students in successfully completing their education

Id.

Components of the Juvenile Justice Sharing Agreement

- 28E Agreement between school district or nonpublic school and all interested parties – remember, public bodies not non-profits for example police, juvenile court, county attorney
- Adopted by the school district's board of directors
- Agreement includes acknowledgment of the confidentiality of all information released unless parental consent it obtained or via a court order

Id.

Employee Records

Personal information in confidential personnel records of government bodies, including

- Application materials such as references, transcripts
- Evaluations
- Health information

Iowa Code § 22.7(11)

Exception to allow Release of Employee Records

There are certain named personnel records that are public records

- Salary
- Benefits
- Position
- Details about a termination that was the result of final disciplinary action

Id.

What about our security procedures?

Information concerning security procedures or emergency preparedness information is specifically defined as a public record if

- developed and maintained by a government body
- disclosure could reasonably be expected to jeopardize safety and
- the governmental body has adopted a rule or policy identifying the specific records or class of records to be protected

Iowa Code § 22.7(50)

Such as?

- Emergency operations and response procedures
 - Evacuation procedures
 - Lockdown procedures
- Passwords and other security information
 - Passcodes
 - Security codes
 - Passwords – especially those used to communicate with law enforcement, first responders, media, etc.
- And the catchall, that disclosure would
significantly increase the vulnerability of critical physical systems or infrastructures of a government body to attack

Id.

Questions?

- Is there anything else you need in the area of emergency planning? Beyond public records issues?
- What other topics can you suggest for an emergency planning webinar?

Vitals

- See the Iowa School Safety Alliances Web Site
iowaschoolsafety.org
- Watch out for the student safety video contest.
Information to be released in March, 2016.
- For more information contact Jane C.
- DE's web site, etc.

Spring Workshops

All workshops will be held from 9am – noon

- March 31 Mississippi Bend AEA - 729 21st. St, Bettendorf
- April 1 Heartland AEA - 6500 Corporate Drive, Johnston
- April 4 Keystone AEA 1400 2nd St NW, Elkader
- April 5 AEA 267 - 3712 Cedar Heights Dr, Cedar Falls
- April 11 Grant Wood AEA - Linn County Emergency Management, 6301 Kirkwood Blvd, Cedar Rapids
- April 14 Green Hills AEA - 919 N. Chestnut, Avoca
- April 20 Great Prairie AEA - 2814 N. Court St., Ottumwa
- May 3 Northwest AEA - 1520 Morningside Ave, Sioux City
- May 4 Prairie Lakes AEA - 500 NE 6th St, Pocahontas

Sign up on the Department of Education Website
A-Z Index/School Safety



Upcoming Webinars

March 11th 10:00 am - Reunification Planning

Sharon Hawa from the National Center for Missing & Exploited Children (NCMEC) will discuss the importance of disaster reunification planning and the implications for children who become separated from their parents and guardians in the aftermath of a disaster. She will also talk about the various disaster resources that NCMEC offers to support disaster-impacted states with the identification, location and reunification of children with their families.

Questions?

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**Webinar Ideas?
Requests?**

Thank you for your
participation today! Have
a great week-end!